

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH WAYNE RICH,

Petitioner,

No. CIV S-05-0892 MCE GGH P

vs.

ROSEANNE CAMPBELL, Warden,

Respondent.

ORDER

A joint scheduling statement in this matter was filed on September 7, 2005, pursuant to the court's order filed July 13, 2005.¹ After reviewing the joint statement, the court issues the following ORDERS:

1. Should petitioner elect to stand on the existing petitioner, he must so inform the court and file any supplemental points and authorities, within 90 days;

2. Should petitioner choose to amend the petition and proceed on exhausted claims only, petitioner must both inform the court of such an intent and must file an amended exhausted-claims-only petition, within 90 days;

3. If petitioner proceeds in accordance with no. 1 or no. 2 above, respondent must file an answer or a responsive motion within 45 days; thereafter, petitioner must, within 30 days,

¹By order filed on August 12, 2005, the court granted the parties' request for an extension of time to respond.

1 file any reply to the answer or an opposition to a motion, as appropriate; if respondent files a
2 motion, he must file any reply to the opposition within 15 days of service thereof.

3 4. Should petitioner identify unexhausted claims which he seeks to exhaust,
4 petitioner shall identify all claims, exhausted and unexhausted, shall file an amended exhausted-
5 claims-only petition if the original petition does not contain only exhausted claims or if it does
6 not contain all of his exhausted claims, shall seek to demonstrate good cause for having failed to
7 exhaust state court remedies as to any claim which he would seek to exhaust, and shall move the
8 court to hold the proceedings in abeyance pending exhaustion of state court remedies as to the
9 unexhausted claims, within 90 days; if a stay is ultimately granted, petitioner must immediately
10 pursue state court exhaustion, that is, within 30 days of the granting of a stay, and, upon said
11 exhaustion in state court, within 30 days, file an amended petition containing all claims newly
12 and previously exhausted, after which any stay will be lifted and this matter will proceed;

13 5. Since respondent reserves the right to object to any motion for a stay to pursue
14 unexhausted claims, primarily to raise any challenge to claims of good cause for having failed to
15 exhaust any ground, he must do so within 30 days of service of any motion to stay the
16 proceedings by petitioner;

17 6. If petitioner intends to make a motion for leave to conduct discovery under the
18 Rules Governing Section 2254 Cases, Rule 6(a), petitioner must do so within 90 days;

19 7. If petitioner chooses to move for an evidentiary hearing, he must do so at the
20 earliest appropriate opportunity.

21 DATED: 9/26/05

22
23 /s/ Gregory G. Hollows

24 _____
25 GREGORY G. HOLLOWS
26 UNITED STATES MAGISTRATE JUDGE

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